

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

DONALD L. RUSSELL,

Petitioner,

No. 3:14-cv-00287-ST

OPINION AND ORDER

v.

**SUPERVISOR ANDREW ALTMAN
and STATE OF OREGON,**

Respondents.

MOSMAN, J.,

On September 30, 2015, Magistrate Judge Stewart issued her Findings and Recommendation [46], recommending that Petitioner Donald Russell's Second Amended Petition for Writ of Habeas Corpus [19] be DENIED. Judge Stewart also recommended that the court should decline to issue a Certificate of Appealability. Petitioner objected [48], Respondent State of Oregon responded [49].

DISCUSSION

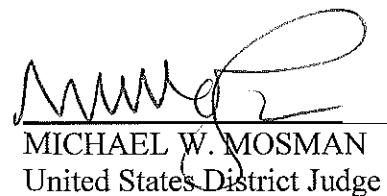
The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court

is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Stewart's recommendation and I ADOPT the F&R [46] as my own opinion.

IT IS SO ORDERED.

DATED this 3d day of November, 2015.



MICHAEL W. MOSMAN
United States District Judge